IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	
	§	
WESTERN FIDELITY MARKETING, INC.,	§	**CASE NO. 497-45416-BJH-11**
WESTERN FIDELITY FINANCIAL CORP.,	§	**(Consolidated)**
	§	
Debtors.	§	
	§	
JAMES BLAKEMAN,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
PHILIP R. BISHOP and	§	
BISHOP, PAYNE, HARVARD	§	
& KAITCER, LLP,	§	**ADVERSARY NO. 99-4173**
	§	
Defendants,	§	
	§	
VS.	§	
	§	
WESTERN FIDELITY MARKETING, INC.,	§	
	§	
Intervenor.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Before the Court is the Defendants' Motion for Sanctions (the "Motion"). In the Motion, Defendants Philip R. Bishop and Bishop, Payne, Harvard & Kaitcer, L.L.P. (collectively, "Bishop") seek sanctions for bad faith filing, bad faith prosecution and vexatious litigation against Plaintiff James Blakeman ("Blakeman"), and his counsel, Thomas Bullard ("Bullard"), C.W. Stocker, III ("Stocker"), and the law firm of C.W. Stocker, III, P.C. (hereinafter, such counsel are sometimes collectively referred to as "Stocker") in connection with this adversary proceeding. Judge Tillman took evidence and heard argument on August 2, 2000 and August 10,

2000. Following the close of the evidence, Judge Tillman recused himself and the adversary was transferred to the undersigned Judge. After a status conference with the parties to discuss how to proceed in light of the recusal of the judge who actually heard the evidence, the parties agreed that they wanted the Court to rule on the Motion based upon a review of the record and written closing arguments they wished to submit. The parties agreed to a timetable for the submission of their written closing arguments.

Thus, after reviewing the Motion, the extensive record made in connection with the hearing on the Motion, and the written closing arguments, the Court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, made applicable here by Federal Rule of Bankruptcy Procedure 7052.[1]

I. FINDINGS OF FACT

A. THE STILL LITIGATION

1. Gary R. Still ("Still") brought suit against Western Fidelity Marketing, Inc. ("WFM"), Blakeman, and others (the "Defendants") in Cause No. 48-159538-95 in the 48th District Court of Tarrant County, Texas, asserting several million dollars in damages (the "Still Litigation"). *See* Defendants' Exhibit 4; Transcript from hearing on the Motion ("Transcript") at 321. Still was represented by Stocker. *See* Defendants' Exhibit 3; Transcript at 321. Initially, the Defendants were represented by Bishop. *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 3.

[1]Because this is a non-core proceeding, *see infra* at ¶ 92, the Court's findings of fact and conclusions of law will be submitted to the District Court as proposed findings and conclusions in accordance with Bankruptcy Rule 9033. Parties may object to these proposed findings and conclusions within the time period provided by Bankruptcy Rule 9033(b).

2. On June 5, 1997, an Order was entered substituting Kleber Miller ("Miller") and the law firm of Shannon, Gracey, Ratliff & Miller as counsel for the Defendants. *See* Defendants' Exhibit 2. At the time of the substitution of counsel, Bishop transferred all of the Still Litigation legal files (the "Joint Legal Files") to Miller. *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 6. Bishop has not represented Blakeman in any matter since June 5, 1997. *See id.*

3. On September 22, 1997, Blakeman and Still agreed to settle the Still Litigation, with Blakeman agreeing to pay $5,000 to Still and Still agreeing to dismiss his claims against Blakeman with prejudice. *See* Defendants' Exhibit 69. Pursuant to an Order entered on September 26, 1997 by the Texas state court, the settlement was approved and Still's claims against Blakeman were dismissed with prejudice.[2] *See* Defendants' Exhibit 3.

B. BANKRUPTCY FILINGS AND RELATED ADVERSARY PROCEEDINGS

4. On September 18, 1997, WFM and Western Fidelity Financial Corporation ("WFF") (collectively, "Western Fidelity") filed voluntary petitions under chapter 11 of the United States Bankruptcy Code.[3]

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[2]As is apparent from the dates, the settlement between Still and Blakeman occurred several months after Bishop had withdrawn as counsel. *See* Defendants' Exhibits 2 and 69. Bishop had no knowledge of, and played no role in, the settlement discussions between Blakeman and Still. *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 7. Furthermore, Blakeman admitted that the settlement was precipitated by statements made by Miller causing him to doubt whether Western Fidelity would indemnify him against Still's claims. *See* Defendants' Exhibit 11, ¶ 5.

[3]WFM and WFF were substantively consolidated on July 15, 1998. Another affiliate, JMJ Financial Corporation ("JMJ"), filed a voluntary chapter 11 petition on February 3, 1999. All three debtors filed a joint plan of reorganization (the "Joint Plan") which was confirmed on June 11, 1999. Under the Joint Plan, WFF (previously substantively consolidated into WFM), WFM, and JMJ were merged and now operate (as reorganized) as Western Fidelity Marketing, Inc.

a. Still Claim Adversary – Adversary No. 98-4043

5. Still filed proofs of claim against Western Fidelity in the bankruptcy cases in the amount of $2.6 million.

6. On February 26, 1998, Western Fidelity sued Still in Adversary No. 98-4043 seeking, *inter alia*, the disallowance of his proofs of claim (the "Still Claim Adversary").[4] *See* Defendants' Exhibit 5. On April 22, 1998, Western Fidelity, now represented by Bobby Forshey ("Forshey"), issued a subpoena directed to Blakeman to obtain his deposition testimony as a third party witness in the Still Claim Adversary. *See* Defendants' Exhibit 8.

7. Blakeman asked Stocker to represent him at his deposition. *See* Defendants' Exhibit 45 at 59. Despite the fact that Stocker had represented Still in connection with his claims against Blakeman in the Still Litigation (which were now settled) and Stocker continued to represent Still in connection with his ongoing claims against Western Fidelity in the Still Litigation (pending in Texas state court), Blakeman retained Stocker as his attorney and signed a contingency fee agreement dated May 6, 1998 (the "Fee Agreement"). *See* Defendants' Exhibit 9.

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[4]Still was represented in this adversary by Josephine Garrett. After a partial summary judgment was obtained in its favor and a trial on a remaining issue, Western Fidelity obtained a judgment disallowing Still's claims. The partial summary judgment was granted based upon the fact that Still had entered into an Offer in Compromise with the IRS asserting that he could not pay his tax liability because he owed Western Fidelity monies. Based upon the admissions made in the Offer in Compromise, this Court concluded that Still was estopped from asserting that Western Fidelity owed him monies. *See* Defendants' Exhibit 5. After a trial of the remaining issue relating to override credits to Still's agency account, this Court entered a judgment in favor of Western Fidelity in the amount of $138,271.00. On appeal, the District Court affirmed. *See* Defendants' Exhibit 6. On further appeal, the Fifth Circuit affirmed in part and reversed in part – upholding the money judgment in Western Fidelity's favor but concluding that Still's misrepresentation to the IRS did not prevent him from pursuing his claims against Western Fidelity. *Western Fidelity Ins. Co. v. Still*, No. 00-10063; slip op. (5th Cir. April 12, 2001). On September 11, 2000, Western Fidelity filed a motion to compromise with respect to its claims against Still and Blakeman, which the Court approved on November 22, 2000.

8. On May 6, 1998, Stocker, allegedly acting as Blakeman's attorney, signed a letter jointly addressed to Miller and Bishop, as former counsel for Blakeman in the Still Litigation, demanding possession of the entire Joint Legal File in the Still Litigation. *See* Defendants' Exhibit 10. At the time the demand was made, Bishop had not acted as Blakeman's counsel for eleven months. *See* Defendants' Exhibit 2. Furthermore, when the demand was made Bishop no longer had possession of the Joint Legal File as he had transferred it to Miller at the time of the substitution of counsel.[5] *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 6.

b. Joint Legal File Adversary – Adversary No. 98-4112

9. Following Stocker's actions (purportedly on behalf of Blakeman)[6] to obtain the Joint Legal File, on May 11, 1998, Western Fidelity sued Blakeman in Adversary No. 98-4112 (the "Joint Legal File Adversary"), contending that Blakeman's demand for the Joint Legal File violated the automatic stay and that Blakeman had no right to possession of the Joint Legal File. *See* Defendants' Exhibit 13. Forshey and Joseph Colvin ("Colvin") represented Western Fidelity in the Joint Legal File Adversary. *See id.*

10. Represented by Stocker, Blakeman filed an untimely answer on June 11,

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[5]Blakeman admitted that he had no reason to believe that Bishop still had the Joint Legal File. *See* Defendants' Exhibit 45 at 44-46. Additionally, when the demand was made, no litigation was pending between Blakeman and Western Fidelity. *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 9; Transcript at 197-98.

[6]For the reasons explained in detail *infra*, the Court finds that the real purpose of Stocker's demand was to give Stocker (as Still's counsel in the Still Litigation) access to the Joint Legal File which was otherwise privileged from discovery by Still. Both Stocker and Bullard testified that the demand letter was intended to encompass the entire Joint Legal File, including privileged documents. *See* Transcript at 134-35, 321. Bullard admitted that if Bishop had transferred the Joint Legal File to Stocker in response to the demand, Bishop would have violated Western Fidelity's privilege. *See* Transcript at 199.

1998. *See* U.S. Bankruptcy Court Docket Sheet for Adversary No. 98-4112 ("Docket Sheet 1"). Western Fidelity filed a motion for clerk's entry of default on June 23, 1998. After conducting a hearing on July 23, 1998, an Order was entered granting the motion for entry of default on August 11, 1998. *See id*. A further hearing was conducted with respect to Western Fidelity's request for attorneys' fees on January 14, 1999. *See id*. On February 1, 1999, a Final Default Judgment was entered against Blakeman in which this Court concluded that: (i) Blakeman's actions had violated the automatic stay, (ii) Blakeman had no right to possession of the Joint Legal File, and (iii) Blakeman should be sanctioned for his knowing violation of the automatic stay in the amount of $11,525.48 (the amount of attorneys' fees incurred by Western Fidelity in bringing the Joint Legal File Adversary). *See* Defendants' Exhibit 14.

11. On February 10, 1999, Blakeman filed a Motion to Amend Judgment or for Relief from Judgment, which was denied by Order entered on March 5, 1999. *See* Docket Sheet 1. Represented by Stocker, Blakeman then appealed to the District Court. The District Court affirmed on November 9, 1999. *See* Defendants' Exhibit 20. Blakeman then appealed to the Fifth Circuit. *See* Defendants' Exhibit 22.

12. On September 11, 2000, Western Fidelity filed a motion in this Court seeking to settle all outstanding disputes with Blakeman.[7] The Court approved this settlement by Order entered on November 22, 2000, which provided for the dismissal of Blakeman's Fifth Circuit appeal. *See* Affidavit of James R. White, filed February 22, 2001 in Adversary No. 99-

[7]As part of this settlement, Western Fidelity agreed not to prosecute its motion for sanctions against Blakeman and Stocker. However, the Court must still address Bishop's requests for sanctions. Pursuant to its September 11, 2000 settlement motion, Western Fidelity also sought to settle all matters in dispute with Still. The November 22, 2000 Order approved both the Blakeman settlement and the Still settlement. *See supra* at n.4.

4173 ("Affidavit of White").

c. Removal of Still Litigation – Adversary No. 99-4033

13. On February 12, 1999, the Still Litigation was removed to this Court. After removal, Still was represented by Josephine Garrett, not Stocker. U.S. Bankruptcy Court Docket Sheet for Adversary No. 99-4033 ("Docket Sheet 2").

14. On February 23, 1999, Western Fidelity filed a motion for summary judgment contending that the Court's prior judgment in the Still Claim Adversary (entered on November 23, 1998) had determined all issues in dispute in the Still Litigation. Still responded to this motion for summary judgment on March 29, 1999 and on May 28, 1999, the Court granted Western Fidelity's summary judgment motion. *See id*.

15. Also, on March 29, 1999, Still filed his motion to remand the Still Litigation to Texas state court. *See id*. That motion was denied by Order entered on May 11, 1999. *See id*.

16. Still appealed the summary judgment order to the District Court, which affirmed on February 2, 2000. *See id*. On further appeal, the Fifth Circuit affirmed in part and reversed in part. *Still v. Western Fidelity Ins. Co.*, No. 00-10218, slip op. (5th Cir. Feb. 16, 2001). *See supra* at n.4. As noted previously, Western Fidelity filed a motion to compromise with Still on September 11, 2000. This settlement, which was approved by Order entered on November 22, 2000, resolved all issues in dispute between Western Fidelity and Still.

C. MALPRACTICE SUIT AND THE SANCTIONS MOTION

17. While Still's appeal was pending from this Court's summary judgment in the Still Litigation, Western Fidelity and Still agreed to attempt to settle their disputes through

mediation. *See* Transcript at 261-63. Shortly thereafter, Stocker contacted Bishop's partner, Herschel Payne ("Payne"), threatening a malpractice suit against Bishop and his law firm by Blakeman if Western Fidelity and Still were unsuccessful in settling the remaining issues in the Still Litigation at the upcoming mediation. *See* Transcript at 261-63, 266. Payne met with Stocker in late August or early September 1999. *See id.* at 261, 310. At this meeting, Stocker indicated that if Bishop would influence Western Fidelity to settle with Still in the Still Litigation, a malpractice suit would not be filed against Bishop and his law firm by Blakeman. *See id.* at 261-63, 266. Stocker believed that Bishop, as Western Fidelity's outside corporate counsel, was in a position to influence a settlement of the Still Litigation at the upcoming mediation. *See id.* at 66-68.

18. On September 27, 1999, shortly after Stocker's meeting with Payne, Blakeman sued Bishop and his law firm in the 153rd District Court of Tarrant County, Texas (the "Malpractice Suit"). *See* Defendants' Exhibit 23; Transcript at 66. In his state court petition, Blakeman asserted that Bishop had breached various duties to him in failing to deliver possession of the Joint Legal File in response to the May 6, 1998 demand letter. *See* Defendants' Exhibit 23. Blakeman also asserted claims against Bishop for implied breach of warranty, professional negligence, gross negligence, breach of fiduciary duty, and for violations of the Texas Deceptive Trade Practices Act. *See id.*

19. Western Fidelity intervened in the Malpractice Suit on October 14, 1999. *See* Defendants' Exhibit 24. Bishop and Western Fidelity then jointly removed the Malpractice Suit to this Court on October 18, 1999. *See* Defendants' Exhibit 25. Upon removal, this Court assigned it Adversary No. 99-4173 and entered a standard Scheduling Order for the disposition

of the suit. *See* Defendants' Exhibit 26.

20. Blakeman filed a motion to remand on November 17, 1999. *See* Defendants' Exhibit 27. That motion was denied pursuant to an Order entered on March 2, 2000. *See* Defendants' Exhibit 29.

21. On December 30, 1999, Western Fidelity filed its first motion for partial summary judgment. *See* Defendants' Exhibit 32. In this summary judgment motion, Western Fidelity contended that the Final Default Judgment in the Joint Legal File Adversary had adjudicated Blakeman's rights with respect to the Joint Legal File adversely to him – specifically, that this Court had determined that Blakeman had no right to possession of the Joint Legal File. According to Western Fidelity, the Final Default Judgment precluded any claims by Blakeman based upon Bishop's failure to deliver possession of the Joint Legal File to Blakeman. *See id.* Moreover, Western Fidelity put Blakeman and Stocker on notice that it intended to seek sanctions for what it believed to be a frivolous lawsuit. *See* Defendants' Exhibit 32, ¶¶ 14-15.

22. Blakeman filed an untimely response to Western Fidelity's first motion for partial summary judgment on February 1, 2000. *See* Defendants' Exhibit 33. Moreover, the response failed to address the issue of the preclusive effect of the Final Default Judgment. *See id*. Blakeman did admit in the response that the Final Default Judgment determined that the Joint Legal File was property of the bankruptcy estate and protected by the automatic stay. *See id.*

23. On February 7, 2000, Blakeman filed a motion to stay further proceedings in the Malpractice Suit pending the outcome of his appeal from the Final Default Judgment in the Joint Legal File Adversary. *See* Defendants' Exhibit 37. Blakeman did not request an expedited hearing on the stay motion and thus, at a docket call on March 1, 2000, the stay motion was set

for hearing on March 28, 2000.[8] *See* Transcript at 239-40; U.S. Bankruptcy Court Docket Sheet for Adversary No. 99-4173 ("Docket Sheet 3"); Defendants' Exhibit 65. Blakeman failed to file a witness or exhibit list in support of his motion for stay and failed to offer any authority to support his contention that the Malpractice Suit should be stayed pending the outcome of his appeal from the adverse judgment in the Joint Legal File Adversary. *See* Transcript at 40; Defendants' Exhibit 37. The Court orally denied the stay motion at the March 28, 2000 hearing and by written Order entered on April 6, 2000. *See* Defendants' Exhibit 39.

24. The Court granted Western Fidelity's first motion for partial summary judgment by Order entered on March 22, 2000. *See* Defendants' Exhibit 34.

25. Western Fidelity filed a second motion for partial summary judgment on February 18, 2000. *See* Defendants' Exhibit 36. In this second motion, Western Fidelity contended that because the Joint Plan (which was confirmed on June 11, 1999) vested title to the Joint Legal File in Western Fidelity free and clear of any right, title or interest asserted by Blakeman, summary judgment should be granted in Western Fidelity's favor. *See* Defendants' Exhibits 18 and 36. Blakeman filed no response to this second motion for partial summary judgment. However, on April 6, 2000, before a ruling issued on the second motion for partial summary judgment, Western Fidelity filed its final motion for summary judgment, including the issues raised in the second motion for partial summary judgment, and issues raised by

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[8]On March 10, 2000, while Blakeman's motion for stay was pending before this Court, Blakeman filed an Emergency Motion for Stay with the Fifth Circuit in connection with his pending appeal from the Final Default Judgment in the Joint Legal File Adversary. *See* Defendants' Exhibit 40. In that motion, Blakeman contended that this Court was guilty of judicial misconduct by "ignoring" his stay motion. *See id*. Although Bishop was not a party to Blakeman's appeal in the Joint Legal File Adversary, Bishop intervened in the appeal to protect its rights. The Fifth Circuit denied Blakeman's emergency motion pursuant to an Order dated March 30, 2000. *See* Defendants' Exhibit 41.

Blakeman's failure to designate any expert witness or timely file his witness and exhibit list, thereby precluding Blakeman from carrying his burden of proof at trial.[9]

26. Bishop also filed a motion for summary judgment on February 15, 2000. *See* Defendants' Exhibit 35. In his motion, Bishop sought summary judgment for the following reasons:

a. Blakeman's claims lacked any factual support;

b. Blakeman's claims were barred by limitations;

c. Blakeman's claims were barred by collateral estoppel;

d. Bishop did not have possession of the Joint Legal File;

e. Bishop did not direct Western Fidelity to file the Joint Legal File Adversary against Blakeman;

f. Blakeman's negligence claims were barred by the exculpation

[9]Pursuant to the Scheduling Order, expert witnesses were to be designated by March 17, 2000, discovery was to be concluded by March 27, 2000, and the case was set for a trial docket call on April 26, 2000. *See* Defendants' Exhibit 26. Blakeman failed to comply with the Scheduling Order in several important respects: (i) Blakeman's witness and exhibit list were filed late; (ii) Blakeman did not cooperate in the preparation of a joint pre-trial order, *see* Defendants' Exhibits 49 and 50; rather, Blakeman filed his own pre-trial order after the deadline, *see* Defendants' Exhibit 51; and (iii) Blakeman failed to file proposed findings of fact and conclusions of law, *see* Transcript at 43. Blakeman also failed to complete discovery before the discovery deadline provided in the Scheduling Order. Specifically, Blakeman served deposition notices dated March 10, 2000 directed to Colvin, Forshey, Western Fidelity's president, and Bishop. *See* Defendants' Exhibit 42. While the notices were filed before the discovery deadline, the notices sought to take the four depositions after the discovery deadline. *See* Transcript at 40-41. Bishop and Western Fidelity objected to the notices and moved to quash them on the basis that the notices directed to Colvin and Forshey sought privileged documents and that the notices directed to Western Fidelity's president and Bishop sought depositions after the discovery deadline. *See* Defendants' Exhibit 43. The deposition notices were quashed with prejudice pursuant to an Order entered on March 29, 2000. *See id.* As noted previously, Blakeman also filed his trial witness and exhibit list after the date mandated in the Scheduling Order. *See* Transcript at 41-42. Western Fidelity and Bishop both filed motions to strike Blakeman's witness and exhibit list on April 6, 2000, contending that it was untimely and that it sought to designate experts after the deadline for designating expert witnesses. *See* Defendants' Exhibits 53 and 54. Blakeman failed to respond to either motion to strike. *See* Transcript at 42. The list was stricken pursuant to an Order entered on May 15, 2000. *See* Defendants' Exhibit 55.

provision in the Order confirming the Joint Plan;

g. No cause of action exists under Texas law for breach of an ethical duty;

h. Blakeman's claims for breach of implied warranty cannot be maintained under the Texas Deceptive Trade Practices Act;

i. The Joint Legal File was protected by the joint defense privilege; and

j. Blakeman could not establish any damages.

See Defendants' Exhibit 35.

27. Bishop specifically asserted in his motion for summary judgment that Blakeman could not satisfy his burden under Rule 56 to bring forth specific evidence establishing a genuine issue of material fact for trial. *See* Defendants' Exhibit 35 ¶ IV. In his motion, Bishop also stated his intent to seek sanctions. *See id.* ¶ V.

28. Blakeman did not respond to Bishop's motion for summary judgment. *See* Transcript at 203.

29. On March 16, 2000, Blakeman filed a motion to disqualify opposing counsel, seeking to disqualify both Forshey and Bishop (the "Motion to Disqualify"). *See* Defendants' Exhibit 44. Blakeman sought to disqualify Bishop – a party to the Malpractice Suit who was represented by the law firm of Chappell, Parmelee, Johnson & Hill, P.C. *See id.* Blakeman never offered any authority or explanation of how a *party* can be disqualified. As with many other motions, Blakeman failed to file a witness and exhibit list in support of his motion to disqualify, *see* Transcript at 43, and the motion was denied pursuant to an Order entered on June 26, 2000, *see* Defendants' Exhibit 47, with specific findings that the motion to disqualify was filed in bad faith and vexatiously by Blakeman and his counsel, *see* Defendants' Exhibit 48, ¶

27.[10]

30. On April 6, 2000, Western Fidelity filed a motion for entry of summary judgment based on its previously filed final motion for summary judgment. *See* Defendants' Exhibit 56. Bishop filed a joint motion for entry of summary judgment on April 17, 2000, based on his previously filed motion for summary judgment. *See* Defendants' Exhibit 57. Both of these motions for entry of summary judgment sought sanctions against Blakeman and Stocker. *See* Defendants' Exhibits 56 ¶ 18 and 57 ¶ 25. Blakeman filed no response to either of the motions for entry of summary judgment. *See* Docket Sheet 3. The motions were set for hearing on May 19, 2000. *See id*.

31. On May 12, 2000, Bishop and Western Fidelity filed their respective motions for sanctions, including the Motion. *See* Defendants' Exhibit 66. Blakeman failed to timely respond to the sanctions motions.[11] *See* Transcript at 117.

32. By Order entered on June 26, 2000, the Court granted the summary judgment motions, thereby denying Blakeman's claims against Western Fidelity and Bishop. *See* Defendants' Exhibit 58. The Court specifically reserved jurisdiction to rule on Western Fidelity's and Bishop's motions for sanctions. *See id.*

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[10]A hearing was held on Blakeman's motion to disqualify on April 26, 2000. *See* Defendants' Exhibit 45. The complete transcript of this hearing was admitted into evidence as Defendants' Exhibit 45 at the hearing on the Motion. That transcript contains a number of important admissions by Blakeman which establish that Blakeman's claims against Bishop in the Malpractice Suit were without evidentiary support as will be discussed in detail *infra*.

[11]The various pending requests for sanctions, including the Motion, were heard on August 2 and 10, 2000. Blakeman did not attend the hearing at all, Stocker attended one day of the hearing, and Bullard attended both days. Western Fidelity's requests for sanctions against Blakeman and Stocker were settled, along with certain other disputes, by Order entered on November 22, 2000, leaving only the Motion and Bishop's request for sanctions in connection with the post-summary judgment discovery (*see* ¶ 34 *infra*) to be disposed of by these Findings and Conclusions.

33. Blakeman appealed from the summary judgments entered against him in the Malpractice Suit. *See* Docket Sheet 3. The District Court affirmed the entry of summary judgment on December 21, 2000. *See id*. Blakeman appealed to the Fifth Circuit.[12]

34. Despite the March 29, 2000 Order quashing Blakeman's deposition notices with prejudice, Blakeman again served deposition notices on Western Fidelity, its counsel and its president on June 30, 2000. *See* Defendants' Exhibit 61. Blakeman also served another deposition notice and request for admissions on Bishop. *See* Defendants' Exhibit 61. Western Fidelity objected to the deposition notices and moved to quash on the basis that the notices were served in violation of the Scheduling Order and the prior Order quashing essentially the same depositions. *See* Transcript at 44-45. Bishop likewise objected to this discovery and moved to quash. *See* Transcript at 44-45. Oddly, this discovery was sought *after* summary judgment had been granted against Blakeman. *See* Defendants' Exhibit 58. Both Western Fidelity and Bishop sought sanctions in connection with these discovery requests.

35. Blakeman failed to respond to the motions to quash. *See* Transcript at 44-45. A hearing was held on July 19, 2000. Neither Blakeman nor his counsel appeared at the hearing despite having been served with notice of the hearing. *See id.*; Defendants' Exhibit 63. The Court granted the motions to quash and set the requests for sanctions in those motions to quash for hearing on August 2, 2000, when the Motion was also set for hearing. *See* Defendants' Exhibit 63.

[12]The November 22, 2000 Order provided for the dismissal of Blakeman's appeal as to Western Fidelity, but not as to Bishop. *See* Affidavit of White.

a. Bad Faith Litigation

36. The Malpractice Suit was commenced and prosecuted by Blakeman and his legal counsel vexatiously and in bad faith. For the reasons explained below, the Court finds that the Malpractice Suit was filed and prosecuted (i) without a legal or factual foundation; (ii) without any prospect of taking the suit to trial; and (iii) for an improper purpose.

37. Stated most simply, the underlying basis for the Malpractice Suit was Bishop's failure to turn over the Joint Legal File to Blakeman in response to Stocker's demand for the file on May 6, 1998. However, Blakeman admitted that he had no information to lead him to believe that Bishop still had the Joint Legal File after Miller substituted in as his counsel in the Still Litigation in June 1997. *See* Defendants' Exhibit 45 at 44-45.

38. Blakeman also alleged in the Malpractice Suit that Bishop put Western Fidelity's interests ahead of Blakeman's interests. *See* Defendants' Exhibits 23 at 4 and 31 at 7. However, at the hearing on the motion to disqualify, Blakeman admitted that he did not know of anything that Bishop had done to put Western Fidelity's interests ahead of his interests. *See* Defendants' Exhibit 45 at 48.

39. Blakeman also alleged in the Malpractice Suit that Bishop breached fiduciary duties owed to him. *See* Defendants' Exhibit 23 at 7. Blakeman testified at the hearing on the motion to disqualify that the basis for this claim was that: (i) Bishop had represented him; (ii) Bishop no longer represented him; and (iii) eight months after Bishop withdrew as counsel, he went to Bishop's office and he could not get the Joint Legal File. *See* Defendants' Exhibit 45 at 45. However, as noted previously, Blakeman admitted that he had no reason to believe that Bishop still retained possession of the Joint Legal File at the time of his demand. *See id.* at 44-

45.

40. Blakeman also alleged in the Malpractice Suit that Bishop improperly communicated confidential information to Western Fidelity and knowingly used and abused Blakeman's privilege. *See* Defendants' Exhibit 44, ¶ 2. When questioned, Blakeman could offer no facts or other information to support these allegations. *See* Defendants' Exhibit 45 at 34-45.

41. Blakeman also alleged in the Malpractice Suit that Bishop breached his duties to Blakeman because Bishop instructed Forshey to commence the Joint Legal File Adversary against Blakeman. *See* Defendants' Exhibit 23 at 4. In prehearing discovery, Bishop requested that Blakeman disclose the basis of his allegation:

> Interrogatory No. 9:
>
> State in detail all facts that support the claim made on page 4 of PLAINTIFF'S ORIGINAL PETITION that "Western, represented by Forshey, at the direction of Bishop, filed its original complaints against Blakeman for Contempt, Sanctions, Punitive Damages and Other Relief."
>
> Response:
>
> This statement was made by Joseph Colvin. It is supported by the billing records of Defendants and of Forshey. It is also supported by the fact that the alleged letter from Western to Forshey requesting the suit against Plaintiff was allegedly sent some two weeks after the fact. It is further supported by the fact that Western's remaining officer, Jim White, offices with Defendants.

See Defendants' Exhibit 31 at 7.

42. Despite having sworn that the above interrogatory answer was true and correct, at the hearing on the motion to disqualify, Blakeman testified that he had never met Colvin and could not recall Colvin making that statement. *See* Defendants' Exhibit 45 at 26-32. Blakeman did not know to whom Colvin may have made such a statement and Blakeman admitted that he could not recall reviewing any specific billing entries to support his allegation.

See id. at 32-34.

43. Moreover, at the hearing on the Motion, Colvin testified that he never made the alleged statement. *See* Transcript at 107. The Court finds Colvin's testimony credible and concludes that the statement was never made.

44. With regard to the May 6, 1998 demand letter, Bishop stated in his affidavit dated February 14, 2000 (filed in support of Bishop's motion for summary judgment) that he forwarded the demand letter to Western Fidelity's bankruptcy counsel. *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 9. Blakeman alleges in the Malpractice Suit that this, in and of itself, constitutes a breach of duty by Bishop. *See* Defendants' Exhibit 23 at 4; Transcript at 245, 293-95.

45. Bishop's delivery of the demand letter to Forshey did not constitute a breach of duty by Bishop. First, the May 6, 1998 demand letter from Stocker did not contain any confidential information. *See* Defendants' Exhibit 10. Second, Bullard admitted that he had no legal authority to support his contention that Bishop's delivery of the demand letter to Forshey breached some duty Bishop owed to Blakeman. *See* Transcript at 201. Finally, Bishop's delivery of the demand letter to Forshey provided no basis for any claim against Bishop because Blakeman had no right to possess Western Fidelity's privileged documents relating to the Still Litigation or to waive that privilege by providing those documents to Stocker.[13]

[13]When two defendants are jointly represented (like Blakeman and Western Fidelity in the Still Litigation), neither defendant can unilaterally waive the privilege with respect to privileged materials contained in a joint legal file. *In re Grand Jury Subpoenas, 89-3 and 89-4,* 902 F.2d 244, 249-50 (4th Cir. 1990). To accept Blakeman's position would allow him to provide Stocker with access to otherwise privileged documents, thereby waiving Western Fidelity's privilege, without even disclosing the existence of the demand for the Joint Legal File to Western Fidelity. When one jointly represented party attempts to secure a waiver of a privilege between jointly represented parties, that must be done in the context of a judicial proceeding where the rights of all parties may be considered and safeguarded.

b. Bad Faith Conduct in the Prosecution of the Case

(i) Timing of the Filing

46. In an attempt to show that the Malpractice Suit was filed for a proper purpose (and not for the purpose of coercing a settlement in the Still Litigation), both Stocker and Bullard tied the filing of the Malpractice Suit to the two year statute of limitations for legal malpractice claims running from the date of Blakeman's settlement with Still on September 22, 1997. *See* Transcript at 149-50, 287-88. For the reasons explained below, this explanation is unpersuasive.

47. The Malpractice Suit was filed on September 27, 1999, some five days *after* the cited limitations deadline. *See* Defendants' Exhibit 23. In other words, Blakeman had

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At the hearing on the Motion, Bullard admitted that he had read and understood an article published in the HOUSTON LAWYER regarding the attorney-client privilege in joint defense and common interest cases. *See* Transcript at 198-99. That article states:

> Only the one holding the privilege can waive the privilege; no one can waive the privilege of another. In the case of privilege held jointly, as in the common interest privilege, no waiver can rest solely upon the actions of a single party. Every holder of the privilege has the right to resist disclosure, and waiver requires the consent of all. Even the consent of the majority where several parties share the privilege will not suffice to waive the privilege. This is an exception to the general rule that waiver is automatic when information is disclosed to a third party. . . The determinative issue is whether the disclosure was to a party that is now a present adversary. If not, the privilege survives.

Robert W. Higgason, *The Attorney-Client Privilege in Joint Defense and Common Interest Cases*, 34 HOUSTON LAWYER 20, 22 (1996). Bullard also admitted that if Bishop had delivered the Joint Legal File to Stocker in accordance with the demand, Bishop would have violated Western Fidelity's privilege. *See* Transcript at 199. Bishop's disclosure of the demand letter to the other jointly represented party (Western Fidelity and its counsel, Forshey), violated no duty Bishop owed to Blakeman.

Further, because no litigation was pending between Western Fidelity and Blakeman at the time Stocker and/or Blakeman demanded the Joint Legal File, the contents of that file were protected by the joint defense privilege. *Matter of Grand Jury Subpoena Duces Tecum Dated Nov. 16, 1974*, 406 F. Supp. 381, 394 (S.D.N.Y. 1975). *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 9. Therefore, Blakeman had no right to demand that Bishop hold this communication secret from the other jointly represented party. To accept Blakeman's contention would lead to the result that Blakeman could demand possession of the Joint Legal File, for the purpose of waiving Western Fidelity's privilege and handing the file over to opposing counsel, and that Western Fidelity, the other jointly represented party, would have no right to even know of the existence of this demand.

already missed the deadline to file the Malpractice Suit when the suit was filed if the statute of limitations ran two years from the date of Blakeman's settlement with Still.

48. Stocker also contended at the sanctions hearing that the limitations deadline relating to Blakeman's claims that Bishop improperly directed the filing of the Joint Legal File Adversary was May 6, 2000, the second anniversary of Stocker's demand letter. *See* Transcript at 287-88. Moreover, Stocker claimed that a four year statute of limitations was applicable with respect to Blakeman's breach of fiduciary duty claims against Bishop. If these deadlines are correct, there was no need to file the Malpractice Suit shortly before the scheduled mediation in the Still Litigation and there was no need for Stocker to meet with Payne and threaten the Malpractice Suit when he did.

49. Based upon the evidence, the Court finds that the Malpractice Suit was filed by Stocker in an improper attempt to coerce a settlement in the Still Litigation for another client.

(ii) Failure to Respond to Dispositive Motions

50. Blakeman filed a response to Western Fidelity's first motion for partial summary judgment. However, this response was filed late and contained no authorities to establish that the Final Default Judgment in the Joint Legal File Adversary did not preclude any claims by Blakeman to the Joint Legal File. *See* Defendants' Exhibit 33. Blakeman filed no response to Western Fidelity's second motion for partial summary judgment based upon the preclusive effect of the Order confirming the Joint Plan. *See* Defendants' Exhibit 68. On February 15, 2000, Bishop filed a motion for summary judgment, specifically asserting that Blakeman could not satisfy his burden under Rule 56 to bring forth specific facts to establish a

material issue for trial. *See* Defendants' Exhibit 35 at 9, 12-13. Blakeman filed no response to Bishop's motion. *See* Transcript at 202-03. Blakeman made no effort to bring forth any evidence to support his allegations of misconduct by Bishop. *See id.* at 202.

51. Western Fidelity and Bishop filed motions on April 6, 2000 to strike Blakeman's trial witness and exhibit list. *See* Defendants' Exhibits 53 and 54. Blakeman failed to respond to either motion to strike. *See* Transcript at 42.

52. Western Fidelity and Bishop filed motions for the entry of final summary judgment on April 6 and 17, 2000, respectively. *See* Defendants' Exhibits 56 and 57. Blakeman failed to respond to either motion. *See* Docket Sheet 3.

53. Bullard testified that he failed to respond to the various motions for summary judgment and the motions to strike because he was unfamiliar with the applicable federal rules and procedures. *See* Transcript at 151-52. The Court finds this testimony unpersuasive. Moreover, this testimony is inconsistent with other pleadings signed by Bullard in the Malpractice Suit. Blakeman did respond (although it was not timely) to Western Fidelity's first motion for partial summary judgment. That response refers to L.R. 56.3 and 56.5 which govern summary judgment practice in this District. *See* Defendants' Exhibit 33. In turn, L.R. 56.1 refers to L.R. 7.1 through 7.3 which controls motion practice generally. L.R. 7.1(e) clearly states that responses to motions must be filed within 20 days from the date the motion is filed. In his testimony, Bullard admitted that he was aware of L.R. 56.3 and 56.5, as well as the requirements of L.R. 7.1 relating to the time for filing responses. *See* Transcript at 229-31. Bullard admitted that he understood the need to file a response to a motion for summary judgment, and was aware of the 20 day deadline for filing such a response under L.R. 7.1. *See id.*

Bullard admitted that, regardless of the reason for his failure to respond to the various motions in the Malpractice Suit, he understood that a response was necessary and had to be filed within 20 days. *See id.* at 231.

54. Absent from both the briefs and the testimony of Stocker and Bullard at the hearing on the Motion was any mention of the legal and/or factual points which might have been raised in response to the motions for summary judgment had responses been filed. For example, Bishop's motion for summary judgment filed on February 15, 2000 specifically stated that Blakeman had no evidence to support his claims. *See* Defendants' Exhibit 35 at 9, 12-13. Pursuant to Rule 56(e), this placed the burden on Blakeman to bring forward evidence of specific facts to demonstrate the existence of a material issue of fact. Fed. R. Civ. P. 56(e); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Neither Stocker nor Bullard offered any indication in connection with the hearing on the Motion that there were specific facts that might have been raised by Blakeman in opposition to Bishop's motion for summary judgment. This continuing lack of factual substantiation for the Malpractice Suit strongly indicates that no responses were filed by Blakeman to the last four motions for summary judgment because he had no basis upon which to raise a genuine issue of material fact and oppose summary judgment being entered against him.

(iii) Failure to Designate Expert Witnesses

55. Pursuant to the Scheduling Order, expert witnesses had to be designated by March 17, 2000, the date 45 days before trial. *See* Defendants' Exhibit 26. Bishop had also served a set of interrogatories on Blakeman requesting that he disclose the identity of any experts. *See* Defendants' Exhibit 31 at 4-5. Blakeman's responses dated December 27, 1999

stated that no expert had been retained. *See id.* Blakeman failed to designate any expert witnesses either as required by the Scheduling Order or in response to Bishop's interrogatories. *See* Transcript at 39-40.

56. Pursuit of legal malpractice claims generally requires expert testimony to establish the applicable standard of care that has allegedly been breached. *Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990). Expert testimony is not required in the rare instance where the breach of duty is obvious to a lay person. *Id*. at 794. Blakeman contended in the Malpractice Suit that Bishop breached the rules of ethics pertaining to the conduct of attorneys representing joint clients. *See* Defendants' Exhibit 23 at 5-6. Such an alleged breach of duty, particularly given Blakeman's lack of any knowledge or supporting facts, would require expert testimony. *See Geiserman v. MacDonald*, 893 F.2d at 793. Consequently, in order for Blakeman to establish any claim against Bishop in the Malpractice Suit, he would have been required to introduce appropriate expert testimony to establish the applicable standard of care and the breach of that standard by Bishop. Without expert testimony, Blakeman could not proceed to trial on his malpractice claims against Bishop.

(iv) Improper Interrogatory Answers

57. On December 27, 1999, Blakeman served a response to Bishop's Interrogatories. *See* Defendants' Exhibit 31. These responses are signed by Blakeman who swore that the answers were true and correct. *See id.* at 12. Interrogatory 9, which is quoted *supra* at ¶ 41, requested the basis for Blakeman's contention that Bishop had instructed Forshey to sue Blakeman in the Joint Legal File Adversary. *See id.* at 7. In his testimony at the hearing on the motion to disqualify, Blakeman admitted that although he had sworn that his interrogatory

answer was true and correct, it was not – he did not know Colvin, did not recall having spoken to Colvin, did not believe that he had been the recipient of the statement, and did not know to whom the statement might have been made. *See* Defendants' Exhibit 45 at 26-32. Similarly, Blakeman's response to the interrogatory states that his contention is also based upon the billing records of Bishop and Western Fidelity's legal counsel. *See* Defendants' Exhibit 31 at 7-8. However, Blakeman admitted that although he had sworn to the accuracy of this statement, he could not recall ever having reviewed the billing records, and could not cite to specific entries which would support his allegations in the Malpractice Suit. *See* Defendants' Exhibit 45 at 33.

(v) Blakeman's Offer to Dismiss with Prejudice

58. Bullard testified that he contacted Bishop's counsel after the April 26, 2000 hearing on the motion to disqualify and offered to dismiss the Malpractice Suit with prejudice. *See* Transcript at 154-56. This testimony was apparently offered at the sanctions hearing to attempt to establish that Bishop and Western Fidelity failed to properly mitigate their damages before seeking sanctions. Bishop's counsel and Western Fidelity's counsel testified that Bullard's offer to dismiss the Malpractice Suit with prejudice was conditioned upon their respective clients' agreement to dismiss their pending requests for sanctions against Blakeman and Stocker. *See id.* at 58-59, 63, 91, 271-72. Bullard testified that the offer to dismiss with prejudice was not a conditional one. *See id*. at 154-56.

59. Bullard's offer to dismiss with prejudice was never communicated in writing. *See id.* at 225. Because that offer was never communicated in writing, the Court must consider whose testimony is more credible.

60. The Court finds that Blakeman's offer to dismiss as communicated by

Bullard was conditioned upon the dismissal of the sanctions requests by Bishop and Western Fidelity. If Blakeman wished to dismiss the Malpractice Suit with prejudice, irrespective of whether the sanctions requests proceeded to trial, all Blakeman had to do was file such a motion to dismiss with the Court and set it for hearing. Furthermore, after the date on which Bullard claims to have made this unconditional offer on Blakeman's behalf, Blakeman appealed from the summary judgments granted to Bishop and Western Fidelity, despite the fact that he never responded to those motions. *See* Docket Sheet 3 and Transcript at 154-56. The filing of these notices of appeal strongly indicates an intention by Blakeman and his counsel to continue the litigation. Certainly, appellate review of the summary judgments will force Bishop to incur additional attorneys' fees. The continued pendency of these appeals is inconsistent with Bullard's testimony that Blakeman wanted to dismiss the litigation with prejudice and halt any further litigation, irrespective of whether the requests for sanctions proceeded to trial.

(vi) Blakeman's Fee Arrangement

61. At the March 28, 2000 hearing on Blakeman's motion for stay, Bullard represented to the Court that he was representing Blakeman in the Malpractice Suit on a *pro bono* basis. *See* Defendants' Exhibit 38 at 8. In his testimony at the sanctions hearing, Bullard again stated that he was representing Blakeman on a *pro bono* basis. *See* Transcript at 124, 250. When questioned about the May 6, 1998 Fee Agreement signed by Stocker and Blakeman, Bullard testified that the fee arrangement reflected in that agreement applied only to proceedings before the state court and did not apply after the case was removed. *See* Transcript at 123-24. There is nothing in the Fee Agreement which limits it to a state court suit, or provides for avoidance of the agreement upon removal to federal court. *See* Defendants' Exhibit 9.

62. Moreover, these statements are in direct conflict with Blakeman's sworn responses to Bishop's interrogatories, which were signed by Bullard as counsel. *See* Defendants' Exhibit 31. In Interrogatory No. 25, Bishop sought information regarding Blakeman's fee agreements with his legal counsel. *See* Defendants' Exhibit 31 at 11. In response to this interrogatory, Blakeman stated, "The fee arrangement is contingent and a written agreement exists." *See id.* This response was sworn to by Blakeman and signed by Bullard as his counsel after the removal of the Malpractice Suit to federal court. *See id.* at 11-12.[14] Furthermore, the interrogatory responses bear the caption of the adversary proceeding in this Court and contain references to the duty to supplement under Fed. R. Civ. P. 26. *See id.* at 1, 6.

63. At the hearing on the Motion, Bullard also admitted that the Fee Agreement was produced to Bishop's counsel in response to a request for production of documents which was served on December 27, 1999, after removal of the Malpractice Suit from state court. *See* Transcript at 123.

64. There is no way to reconcile these inconsistencies. The inescapable conclusion is that either the interrogatory answers and response to the request for production of documents were materially false (and Blakeman's counsel was acting on a *pro bono* basis) or Bullard's representations and his sworn testimony to the Court were materially false (and Blakeman's counsel was acting on a contingent fee basis pursuant to the written Fee Agreement). Blakeman and Stocker have offered no explanation in the record to clarify this obvious and direct conflict.

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[14]The Malpractice Suit was removed to this Court on October 18, 1999, *see* Defendants' Exhibit 25, and the interrogatory responses were dated December 27, 1999, *see* Defendants' Exhibit 31 at 12.

65. Stocker ultimately testified at the hearing on the Motion that he did not expect to get paid by Blakeman. *See* Transcript, at 330-31. The fact that Blakeman's claims lack merit and Stocker now believes that he will not be paid pursuant to the Fee Agreement does not make Bullard's statements that they were representing Blakeman on a *pro bono* basis accurate.

66. This entire *pro bono* argument by Blakeman's counsel raises troubling questions. Why would a lawyer pursue a malpractice case on behalf of a client on a *pro bono* basis? Here, the record offers no explanation for what would be an unusual arrangement. One possible explanation is that Stocker agreed to prosecute the Malpractice Suit to promote some other agenda, such as forcing a settlement of the Still Litigation for another client of his firm, Still.

67. The Court finds that Stocker was representing Blakeman pursuant to the written Fee Agreement, not on a *pro bono* basis, and that Bullard's representations and sworn testimony were false.

(vii) Improper Deposition Notices

68. On March 10, 2000, Blakeman served deposition notices directed to Colvin, Forshey, Western Fidelity's president (White), and Bishop. *See* Defendants' Exhibit 42. The notices directed to Colvin and Forshey sought privileged documents. *See id.* The notices directed to White and Bishop sought to schedule depositions after the discovery cutoff set forth in the Scheduling Order. *See* Defendants' Exhibits 42 and 26. These deposition notices were quashed with prejudice pursuant to an Order entered March 29, 2000. *See* Defendants' Exhibit 43.

69. Despite this, on June 30, 2000, Blakeman served a second set of

deposition notices directed to Forshey, White, and Bishop. *See* Defendants' Exhibit 61. Blakeman also served a set of requests for admission on Bishop. *See* Defendants' Exhibit 60. The notices of deposition were issued in violation of the Scheduling Order, the March 29, 2000 Order quashing the earlier deposition notices with prejudice, and after summary judgment had already been entered against Blakeman. *See* Defendants' Exhibits 26, 43, and 58. Neither Blakeman nor his counsel appeared at the hearing on the motions to quash filed by Western Fidelity and Bishop. *See* Transcript at 44-45. The Court entered an Order on July 28, 2000 quashing these deposition notices. *See* Docket Sheet 3.

70. Because the deposition notices violated the Scheduling Order and the March 29, 2000 Order quashing the prior notices with prejudice, and for other reasons set forth in the July 28, 2000 Order, this Court found that these deposition notices were served in bad faith and vexatiously. *See* July 28, 2000 Order Granting Motions to Quash.

(viii) Motion to Disqualify

71. Pursuant to an Order entered on June 26, 2000, Blakeman's motion to disqualify was denied. *See* Defendants' Exhibit 47. Separate Findings of Fact and Conclusions of Law were entered in support of that Order on June 26, 2000. *See* Defendants' Exhibit 48. The Court found that the motion to disqualify was filed and prosecuted by Blakeman and his counsel in bad faith and vexatiously. *See* Defendants' Exhibits 47 and 48.

D. THE MALPRACTICE SUIT WAS FILED WITHOUT ANY REASONABLE PROSPECT OF BEING TRIED

72. The Malpractice Suit was filed without any reasonable basis or expectation of the asserted claims being tried. As noted previously, malpractice claims, such as those asserted by Blakeman, generally require expert testimony to establish the applicable standard of

care. *See supra* at ¶ 56. Blakeman's failure to designate any experts, either in response to Bishop's interrogatories or pursuant to the Scheduling Order, would make it impossible for Blakeman to take the Malpractice Suit to trial.

73. In addition, both Bishop and Western Fidelity moved to strike Blakeman's trial witness and exhibit list. *See* Defendants' Exhibits 53 and 54. Although striking the list would make it impossible for Blakeman to introduce any evidence at trial, Blakeman failed to respond to these motions. *See* Transcript at 42. The motions to strike were granted and Blakeman's witness and exhibit list was stricken by Order dated May 15, 2000. *See* Defendants' Exhibit 55.

74. As noted previously, Blakeman failed to respond to four other dispositive motions filed by Western Fidelity and Bishop. Blakeman failed to raise a genuine issue of material fact or dispute the legal basis for summary judgment being entered against him in response to these dispositive motions.

E. STOCKER'S ROLE IN THE MALPRACTICE SUIT

75. Blakeman retained Stocker to represent him. *See* Defendants' Exhibit 45 at 58-59. The Fee Agreement was signed by Stocker. *See* Defendants' Exhibit 9. Stocker also signed the May 6, 1998 demand letter which precipitated the Joint Legal File Adversary. *See* Defendants' Exhibit 10. Stocker appeared on behalf of Blakeman in the Joint Legal File Adversary. *See* Defendants' Exhibit 15. Stocker reviewed and approved the original petition in the Malpractice Suit before it was signed and filed by Bullard. *See id.* at 127-28, 315-16. Stocker's name and bar card number appear as the first listed counsel on the original petition and other pleadings filed in the Malpractice Suit. *See id.* at 316. Bullard testified that he consulted

with and kept Stocker advised of many of the issues and positions he was taking in the Malpractice Suit. *See id.* at 127-29. Stocker signed the November 24, 1999 letter which threatened further suits against Bishop by Blakeman. *See* Defendants' Exhibit 70.

76. At the time he signed the original petition in the Malpractice Suit, Bullard had been practicing three years. *See* Transcript at 119. Stocker had been practicing much longer and was an experienced trial attorney. *See id.* at 119-20.

77. Bullard was employed as an associate with C.W. Stocker III, P.C. *See id.* at 119. Stocker was the only equity holder in the firm. *See id.* Bullard admitted that Stocker was his boss and had the right to fire him. *See id.* at 131-32.

78. Both Stocker and Bullard admitted that Stocker had the right of ultimate control over the Malpractice Suit. *See id.* at 132, 333. Stocker met with Payne and threatened the filing of the Malpractice Suit by Blakeman unless the Still Litigation was settled. *See id.* at 261-63, 267. Only Stocker and Payne attended the meeting. Bullard was not present at the meeting. *See id.* at 261.

79. Notwithstanding these facts, Bullard testified that he tried to minimize Stocker's involvement in the Malpractice Suit to avoid potential conflicts with Still. *See id.* at 233. Stocker also testified to an alleged "Chinese Wall" because of the potential conflict. *See id.* at 295-96. This testimony is unpersuasive in light of Stocker's obvious involvement in the Malpractice Suit.

80. In addition, Bullard's testimony is directly contradicted by other documents. For example, in his response to Western Fidelity's first motion for partial summary judgment, Blakeman attached a copy of an Affidavit signed by Stocker on August 21, 1998. *See*

Defendants' Exhibit 33. In paragraph 2 of this Affidavit, Stocker swore as follows:

> *I agreed to represent Blakeman* on the condition that both he and Randy R. Still waive in writing any conflict of interest they might have; although I

> determined a conflict did not exist since they had previously settled all disputed between them;
>
> * * *
>
> Both Blakeman and Still waived, in writing, any conflicts of interest between them.

See Defendants' Exhibit 33, ¶ 2 (emphasis added).

81. The evidence clearly shows that Stocker was a controlling force behind the Malpractice Suit. Although Stocker did not sign the pleadings, or appear in court prior to the hearing on the sanctions motions, he was instrumental to, and an essential part of, the bad faith conduct, both in the filing of, and the continued prosecution of, the Malpractice Suit.

F. LACK OF DAMAGES

82. In response to Bishop's interrogatories seeking information relating to Blakeman's damage claims, the only out-of-pocket expense identified by Blakeman is the $5,000 he paid to settle with Still. *See* Defendants' Exhibit 31 at 6. This settlement was made after Bishop withdrew and Miller was substituted as Blakeman's counsel. *See* Defendants' Exhibits 2 and 69. In his May 7, 1998 Affidavit, Blakeman swore that his settlement with Still was precipitated by Miller's statements which caused him to doubt whether Western Fidelity would honor its indemnification agreement with him. *See* Defendants' Exhibit 11, ¶ 5.

83. On this record, there is no causal connection between the amount Blakeman paid to settle with Still and his claims against Bishop. In fact, Blakeman's own testimony establishes that the settlement had nothing to do with Bishop. *See id.*

84. Blakeman also asserted in response to this interrogatory that he was seeking the disgorgement of attorneys' fees paid to Bishop in connection with his representation

of Blakeman and Western Fidelity in the Still Litigation. *See* Defendants' Exhibit 31 at 6. However, the attorneys' fees paid to Bishop during the joint representation were paid by Western Fidelity, not Blakeman. *See* Defendants' Exhibit 35, Affidavit of Philip R. Bishop ¶ 11. Blakeman has never cited any authority to support his contention that he can recover as his damages the attorneys' fees paid to Bishop by Western Fidelity. There is no basis for Blakeman's claim that he is entitled to recover attorneys' fees paid to Bishop by Western Fidelity.

85. Blakeman also identified his costs in defending against the Joint Legal File Adversary and the damages awarded to Western Fidelity in that adversary as damages to be recovered from Bishop in the Malpractice Suit. *See* Defendants' Exhibit 31 at 6. The Joint Legal File Adversary was filed against Blakeman because of his demand for the Joint Legal File in violation of the automatic stay. *See* Defendants' Exhibit 13. Stocker represented Blakeman in the Joint Legal File Adversary. *See* Defendants' Exhibit 17. The damage award contained in the Final Default Judgment was based on Blakeman's knowing violation of the automatic stay. *See* Defendants' Exhibit 14. There is no basis for Blakeman's claim that Bishop is liable for his costs and potential liability in the Joint Legal File Adversary where he was represented by, and acted on the advice of, Stocker.

86. In Interrogatory No. 6, Bishop requested a description of any portion of the claimed damages which "consists of costs or expenses incurred or paid by you or for you. . . ." *See* Defendants' Exhibit 31 at 6. Blakeman responded that these amounts were being calculated and would be furnished when available. *See id.* Blakeman did not supplement this interrogatory response. Blakeman's failure to identify any such costs or expenses, including any incurred in

connection with the Joint Legal File Adversary, strongly indicates that there were none.

87. Finally, Blakeman sought punitive damages of $400,000 against Bishop. *See id.* In Texas, a party must first establish actual damages as a condition to the imposition of punitive damages. *City Products Corp. v. Berman*, 610 S.W.2d 446, 450 (Tex. 1980). On this record, Blakeman has not shown any actual damages caused by Bishop; and thus, a punitive award would be legally improper.

G. BISHOP'S ATTORNEY'S FEES

88. At the sanctions hearing, Bishop offered evidence of the costs he and his law firm had incurred in defending against the Malpractice Suit. Detailed time records of Bishop's counsel reflect that the cost of defending against the Malpractice Suit through the date of the hearing on the sanctions motions was $144,806.00. *See* Defendants' Exhibit 65; Transcript at 88.

89. The Court, having carefully examined the time and expense records, finds that $136,943.50 of the $144,806.00 requested is reasonable and necessary.[15] In order to adequately represent Bishop against Blakeman's malpractice claims, Bishop's counsel had to become familiar with the Still Litigation, the Still Claim Adversary, and the Joint Legal File Adversary. *See* Transcript at 80-82. The record establishes that David Chappell's usual and customary hourly rate is $225.00, Cynthia Hill's usual and customary hourly rate is $150.00, and Suzanne Rosen's usual and customary hourly rate is $110.00. *See* Transcript at 85-86. These

[15]The Court has discounted the fee requested by Bishop by $7,862.50. Thirteen entries in Defendants' Exhibit 65 indicate charges for "research." *See, e.g.*, Defendants' Exhibit 65, Time Entry for 10/12/99. Without a more detailed description, the Court is unable to determine if these fees were necessary.

hourly rates are reasonable.

90. In addition, Bishop presented evidence relating to the reasonable and necessary fees for responding to any appeal which might be instituted by Blakeman or his counsel from an order awarding sanctions. *See id.* at 88-90. Bishop requested the following additional fees if an appeal was filed by Blakeman or his counsel:[16]

a. $15,500.00 if a sanction order is appealed to the Court of Appeals;

b. $12,500.00 to defend against any request for writ of certiorari; and

c. $25,000.00 if any writ of certiorari is granted by the Supreme Court.

The Court finds Bishop's requested fees and expenses on appeal in the total amount of $53,000.00 to be reasonable and necessary.

91. Any Finding of Fact may also be deemed a Conclusion of Law.

II. CONCLUSIONS OF LAW

92. This Court has jurisdiction over the Motion in accordance with 28 U.S.C. §§ 157 and 1334. The Malpractice Suit and the relief sought in the Motion are non-core proceedings in accordance with 28 U.S.C. § 157(c)(1).

A. THE COURTS' INHERENT POWER TO SANCTION

93. Federal courts, including bankruptcy courts, have an inherent power to sanction bad faith or vexatious litigation. A series of Supreme Court opinions has affirmed a

[16]Bishop also requested $12,500.00 if a sanction order was appealed to the District Court. Because this is a non-core proceeding, there will be no "appeal" to the District Court. Although the Court could have awarded fees based upon the prosecution of objections to these findings and conclusions before the District Court, the Court is satisfied that the sanctions awarded herein (without further fees if an objection is prosecuted before the District Court) disposes of the issues raised in the Motion appropriately.

federal court's inherent power to assess sanctions. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-50 (1991); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764-67 (1980); *Alyeska Pipeline Service Co. v. The Wilderness Society*, 421 U.S. 240, 258-59 (1975); *F.D. Rich Co. v. U.S.*, 417 U.S. 116, 129 (1974); *Hall v. Cole*, 412 U.S. 1, 5 (1973); *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 n.4 (1968) (*per curiam*). *See also Revson v. Cinque & Cinque*, 221 F.3d 71, 78 (2d Cir. 2000); *Conner v. Travis Country*, 209 F.3d 794, 799 (5th Cir. 2000); *Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996).

94. In *Chambers v. NASCO*, 501 U.S. 32, the Supreme Court rejected the proposition that Rule 11 and the vexatious litigation statute, 28 U.S.C. § 1927, displaced a court's inherent power to levy sanctions. *Id*. at 45-47. A court may assess attorneys' fees as sanctions when a party has "acted in bad faith, vexatiously, wantonly or for oppressive reasons." Sanctions may be assessed either for instituting or conducting litigation in bad faith. *Id.* at 48 (quoting *Alyeska*, 421 U.S. at 258-59). As stated in *Roadway Express*, 447 U.S. at 766, "[t]he bad faith exception for the award of attorney's fees is not restricted to cases where the action is filed in bad faith. '[B]ad faith' may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation." (citing to *Hall v. Cole*, 412 U.S. at 15). *See also Alyeska*, 421 U.S. at 258-59 (attorneys fees may be assessed where losing party acted in bad faith, vexatiously, wantonly or for oppressive reasons); *F.D. Rich Co.*, 417 U.S. at 129 ("We have long recognized that attorneys' fees may be awarded to a successful party when his opponent has acted in bad faith, vexatiously, wantonly or for oppressive reasons. . . ."); *Hall*, 412 U.S. at 15 ("It is clear, however, that 'bad faith' may be found, not only in the actions which led to the lawsuit, but also in the conduct of the litigation."); *Newman v. Piggie Park Enterprises*, 390 U.S. at 402, n.4 ("[I]t has long been held that a federal court may award counsel fees to a successful

plaintiff where a defense has been maintained 'in bad faith, vexatiously, wantonly, or for oppressive reasons'").

95. While *Chambers* involved sanctions imposed against a party, the Supreme Court has held that the power to levy sanctions against legal counsel is at least as great. *Roadway Express*, 447 U.S. at 766. Sanctions may be imposed either on individual attorneys or on law firms. *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1576 (11th Cir. 1995) (federal court may use its inherent power to sanction an attorney, party or law firm). Bankruptcy courts have the inherent power to award sanctions for bad faith conduct in a bankruptcy court proceeding. *Citizens Bank & Trust Co. v. Case (In re Case)*, 937 F.2d 1014, 1023 (5th Cir. 1991); *In re Sacco*, 233 B.R. 705, 708 (Bankr. E.D. Tex. 1999).

96. The threshold for the imposition of sanctions is high and the inherent powers are not broadly or liberally implied. *Kipps v. Caillier*, 197 F.3d 765, 770 (5th Cir. 1999), *cert. denied*, __ U. S. __, 121 S.Ct. 52, 148 L.Ed.2d 21 (2000); *In re Rimsat, Ltd.*, 212 F.3d 1039, 1048-49 (7th Cir. 2000); *Klein v. Stahl GMBH & Co. Maschinefabrik*, 185 F.3d 98, 110 (3d Cir. 1999); *Morris v. Adams-Millis Corp.*, 758 F.2d 1352, 1357-58 n.7 (10th Cir. 1985). In order to impose sanctions under its inherent power, a court must first make a specific finding that the party and/or his attorney acted in bad faith. *Kipps v. Caillier*, 197 F.3d at 770. Courts have found bad faith in cases where the action was commenced without sufficient legal or factual grounds to support the claim. *See, e.g., Fellheimer, Eichen & Braverman v. Charter Technologies, Inc.*, 57 F.3d 1215, 1227-29 (3d Cir. 1995)(affirming bankruptcy court's sanction award for bad faith conduct where complaint lacked factual support, the attorney never intended to proceed to trial on the merits, and the suit was filed for an improper purpose); *Morris*, 758 F.2d at 1355-57 (affirming sanctions under court's inherent power for bad faith conduct where

attorney commenced the action without sufficient legal basis, continued to prosecute the action when it became clear that no such grounds for prosecution would develop, and essentially abandoned his client's cause when it became clear to him that the defendant would not respond with a nuisance value settlement); *McCandless v. Great Atlantic and Pacific Tea Co., Inc.*, 697 F.2d 198, 201 (7th Cir. 1983)(affirming sanctions under court's inherent power for bad faith conduct where the claim lacked factual and legal support, and the attorney omitted a key sentence from a quote and failed to respond to the defendant's motion for fees and costs).

97. In addition to bad faith conduct, a court may assess sanctions for conduct that is wanton. *Chambers*, 501 U.S. at 45-46; *In re Fisherman's Wharf Fillet, Inc.*, 83 F. Supp. 2d 651, 665 (E.D. Va. 1999)(court imposed both disciplinary and monetary sanctions upon attorney under inherent power for failing to file responsive pleadings to motion for summary judgment, motion for judgment on the pleadings, and request for admissions, and violating the court's local rules). Although wanton conduct is a less frequently invoked trigger for a court to invoke its inherent power to sanction, a well-documented record of inattention, neglect and delinquency is sufficient to justify an award of sanctions under a court's inherent power. *See Fisherman's Wharf*, 83 F. Supp. 2d at 665.

98. Courts have recognized that sanctions may be assessed against a person who neither signed pleadings nor appeared in court if the person's involvement in the bad faith conduct is sufficient. For example, in *Lockary v. Kayfetz*, 974 F.2d 1166, 1170-71 (9th Cir. 1992), *cert. denied*, 508 U.S. 931 (1993), the court held that sanctions were appropriate against a person who was not a party, attorney or signatory to pleadings, but who orchestrated the frivolous lawsuit.

99. This is in accord with numerous other cases recognizing that sanctions

may be imposed on the parties responsible for the bad faith conduct, even if they do not sign pleadings or personally appear before the court. *Felheimer*, 57 F.3d at 1228 (3d Cir. 1995)(The court may use its inherent sanction power to reach attorneys who did not personally sign the document in question); *Gillette Foods, Inc. v. Bayernwald-Fruchteverwertung GmbH*, 977 F.2d 809, 813 (3d Cir. 1992); *Franchise Tax Board v. Lapin*, 226 B.R. 637, 642 (B.A.P. 9th Cir. 1998)(Bankruptcy court has inherent power to sanction non-parties in appropriate circumstances); *D'Auria v. Minniti*, 242 B.R. 843 (Bankr. E.D. Pa. 2000)(Under inherent power, court may sanction individual attorneys regardless of whether they signed an objectionable pleading).

100. A court's imposition of sanctions under its inherent power is reviewed for abuse of discretion. *Chambers*, 501 U.S. at 55.

101. Here, it is clear that Stocker filed the Malpractice Suit to attempt to coerce a settlement in favor of his other client, Still, who was seeking millions of dollars in damages against Western Fidelity in the Still Litigation. As in *Lockary*, Blakeman's interests ran a "far distant second" to Stocker's own goals. *Lockary*, 974 F.2d at 1171. Further, the fact that Blakeman's alleged damages bear no relation to any act or omission by Bishop demonstrates that Blakeman was used by Stocker to advance his goal of coercing a settlement in the Still Litigation. "That illicit purpose plus the total lack of any evidentiary basis for the serious accusations made in the complaint cry out for judicial recognition and appropriate sanction." *Fellheimer*, 57 F.3d at 1222 (quoting portion of bankruptcy court opinion awarding sanctions that was affirmed).

102. To apply a contrary rule would defeat the ends of justice and the basis behind the rule allowing the imposition of sanctions for bad faith litigation. Because Stocker was

in control of and orchestrated the filing and prosecution of the Malpractice Suit, Stocker may not escape responsibility by putting an associate, like Bullard, in the forefront.

103. Throughout their litigation of the Malpractice Suit, Blakeman and his counsel ignored their obligations to this Court, Bishop, and Bishop's counsel. Blakeman and his counsel have failed throughout this litigation to comply with either the procedural rules (*i.e.*, by timely filing responsive pleadings) or to respond to the serious substantive issues raised by the other parties.

104. Based upon the findings of fact contained herein, the Court concludes that the Malpractice Suit was filed and prosecuted by Blakeman and his legal counsel, Stocker, Bullard and the law firm of C.W. Stocker, III, P.C., vexatiously and in bad faith. Thus, the Motion should be granted, jointly and severally, against Blakeman, individually, Bullard, individually, Stocker, individually, and the law firm of C.W. Stocker, III, P.C., in the amount of $136,943.50, plus up to an additional $53,000.00 depending on appellate actions undertaken by Blakeman and his counsel.

B. THE COURT'S POWER TO SANCTION PURSUANT TO 28 U.S.C. § 1927

105. Courts may also sanction vexatious litigation under 28 U.S.C. § 1927. This statute provides:

> [a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

106. 28 U.S.C. § 1927 is a penal statute enacted to deter unnecessary delay in litigation by requiring attorneys to satisfy personally excess costs attributable to their misconduct. *See Roadway Express*, 447 U.S. at 759-62; *Harris v. Franklin-Williamson Human Svcs., Inc.*, 97

F. Supp. 2d 892, 909 (S.D. Ill. 2000); *Hahn v. City of Kenner*, 1 F. Supp. 2d 614, 617-18 (E.D. La. 1998). Section 1927 only applies to attorneys, and does not apply to clients or any other non-lawyers. *See* 28 U.S.C. § 1927; *Sassower v. Field,* 973 F.2d 75, 80 (2d Cir. 1992), *cert. denied,* 507 U.S. 1043 (1993); *Smith Int'l, Inc. v. Texas Commerce Bank,* 844 F.2d 1193, 1197 (5th Cir. 1988).

107. Under 28 U.S.C. § 1927, the phrase "unreasonably and vexatiously" describes conduct that, when viewed under an objective standard, is harassing or annoying, or evinces the intentional or reckless pursuit of a claim, defense or position that is or should be known by the lawyer to be unwarranted in fact or law or is advanced for the primary purpose of obstructing the orderly process of the litigation. *See Cruz v. Savage,* 896 F.2d 626, 631-32 (1st Cir. 1990); *Harris v. Franklin-Williamson Human Svcs., Inc.,* 97 F. Supp. 2d at 909; *Bobe-Muniz v. Caribbean Restaurants, Inc.*, 76 F. Supp. 2d 171, 174-75 (D. Puerto Rico 1999); *Ward v. Tipton County Sheriff Dep't.*, 937 F. Supp. 791, 802 (S.D. Ind. 1996).

108. The imposition of sanctions under section 1927 is discretionary. *See Harris v. Franklin-Williamson Human Svcs., Inc.*, 97 F. Supp. 2d at 909. The statute itself describes the types of sanctions it authorizes – costs, expenses and reasonable attorney's fees. However, only those costs and expenses incurred as a result of the misconduct are recoverable under section 1927. *See Pacific Dunlop Holdings, Inc. v. Barosh,* 22 F.3d 113, 120 (7th Cir. 1994). Consequently, an award under section 1927 may not shift the entire financial burden of an action unless the entirety of the proceedings proves to be unwarranted and should never have been commenced or persisted in by the offender, and damages were properly mitigated. *See Browning v. Kramer,* 931 F.2d 340, 345 (5th Cir. 1991).

109. Section 1927 applies to all cases before the courts of appeal and the

federal district courts. *See* 28 U.S.C. § 1927 (extending to "any attorney or other person admitted to conduct cases in *any court of the United States*")(emphasis added); *United States v. Wilder,* 680 F.2d 59, 61 (9th Cir. 1982); *see also Reliance Ins. Co. v. Sweeney Corp.*, 792 F.2d 1137, 1138 (D.C. Cir. 1986). Whether the phrase "court of the United States" includes Article I courts is unclear. The courts are divided on whether section 1927 sanctions may be imposed by a bankruptcy court.[17] However, as the Fifth Circuit has not addressed this issue and this Court finds the analysis in *In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531 (Bankr. E.D.N.Y. 1999) persuasive, the Court concludes that it is a court of the United States and can award sanctions pursuant to 28 U.S.C. § 1927.

110. The actions undertaken by Stocker and Bullard in initiating and pursuing the Malpractice Suit were harassing, annoying and evinced the intentional or reckless pursuit of claims that they knew or should have known to be unwarranted in fact or law. Further, the Malpractice Suit was advanced for an improper purpose – to attempt to coerce a settlement in unrelated litigation on behalf of another firm client. The actions of Bullard and Stocker rise to the level of sanctionable conduct under 28 U.S.C. § 1927. *See Cruz v. Savage,* 896 F.2d at 631-32; *Harris v. Franklin-Williamson Human Services, Inc.*, 97 F. Supp. 2d at 909; *Bobe-Muniz v. Caribbean Restaurants, Inc.*, 76 F. Supp. 2d at 174-75. Bishop properly mitigated his damages.

111. Based upon the findings of fact set forth herein, the Court concludes that

[17]Two circuits courts of appeal confronted with the issue of whether a bankruptcy court is a court of the United States for purposes of § 1927 have either declined to decide the issue, *In re Volpert,* 110 F.3d 494, 500 (7th Cir. 1997) (we "leave unanswered whether bankruptcy judges can exercise the authority of 'a court of the United States'" for the purposes of § 1927), or have decided that since a bankruptcy court is not a court of the United States, the bankruptcy court is not authorized to award sanctions under § 1927. *In re Courtesy Inns, Ltd.*, 40 F.3d 1084, 1085-86 (10th Cir. 1994) (although the Tenth Circuit affirmed the bankruptcy court's imposition of sanctions under 11 U.S.C. § 105(a) to prevent an abuse of process.).

sanctions are appropriate against Bullard, individually, Stocker, individually, and the law firm of C.W. Stocker, III, P.C., jointly and severally, pursuant to 28 U.S.C. § 1927.

112. Any Conclusion of Law may also be deemed a Finding of Fact.

A Proposed Judgment consistent with these Findings of Fact and Conclusions of Law will be submitted to the District Court for entry.

Signed this 31st day of May, 2001.

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Barbara J. Houser
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE	§	
	§	
WESTERN FIDELITY MARKETING, INC.,	§	
WESTERN FIDELITY FINANCIAL CORP.,	§	
	§	
Debtors.	§	
	§	
JAMES BLAKEMAN,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	**Misc. No. _____**
	§	
PHILIP R. BISHOP and	§	
BISHOP, PAYNE, HARVARD	§	
& KAITCER, LLP,	§	
	§	
Defendants,	§	
	§	
VS.	§	
	§	
WESTERN FIDELITY MARKETING, INC.,	§	
	§	
Intervenor.	§	

PROPOSED JUDGMENT

Before the Court is the Motion for Sanctions filed by Defendants Philip R. Bishop and Bishop, Payne, Harvard & Kaitcer, L.L.P. Upon review of the Proposed Findings of Fact and Conclusions of Law submitted by the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, and for the reasons stated therein, the Court is of the opinion that Plaintiff James Blakeman, individually, and his counsel, Thomas Bullard, individually, C.W. Stocker, III, individually, and the law firm of C.W. Stocker, III, P.C. (hereinafter referred to collectively as the "Sanctioned Parties") should be and are sanctioned, jointly and severally, in

the amount of $136,943.50. In addition, the Court is of the opinion that Philip R. Bishop and Bishop, Payne, Harvard & Kaitcer, L.L.P. should be and are awarded fees on appeal payable jointly and severally by the Sanctioned Parties as follows:

a. $15,500.00 if this Order is appealed to the Court of Appeals;

b. $12,500.00 if a request for writ of certiorari is filed with the Supreme Court; and

c. $25,000.00 if a writ of certiorari is granted by the Supreme Court.

It is therefore

ORDERED that the Sanctioned Parties are sanctioned, jointly and severally, in the amount of $136,943.50; it is further

ORDERED that the Sanctioned Parties are jointly and severally liable in the additional amount of $15,500.00 if this Order is appealed to the Court of Appeals; it is further

ORDERED that the Sanctioned Parties are jointly and severally liable in the additional amount of $12,500.00 if a request for writ of certiorari is filed with the Supreme Court; and it is further

ORDERED that the Sanctioned Parties are jointly and severally liable in the additional amount of $25,000.00 if a writ of certiorari is granted by the Supreme Court of the United States.

Signed: _____

_____

United States District Judge